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Supreme Court, U.S
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OFFICE OF THE CLERK

No. 04-1151

IN THE SUPREME COURT OF THE UNITED STATES

ROY PITTS,
Petitioner,

v.

JAMES CROSBY,
Secretary, Florida Department of Corrections, and
CHARLIE CRIST,
Attorney General of the State of Florida
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Is it this Court's intention to allow to go unresolved the circuit conflict between the Sixth in *Abela v. Martin,* 348 F.3d 164, 172-73 (6th Cir. 2003) and the Eleventh in *Coates v. Byrd,* 211 F.3d 1225 (11th Cir. 2000), so that state prisoners in Michigan, Ohio, Kentucky and Tennessee have more time to file a habeas corpus than do state prisoners in Florida, Georgia and Alabama, in violation of the equal protection component of the Due Process Clause of the Fifth Amendment?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE

No corporations or subsidiaries are involved here.

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TABLE OF AUTHORITIES

CASES:

Abela v. Martin, 348 F.3d 164, 172-73 (6th Cir. 2003) (*en banc*), *cert. denied sub nom. Caruso v. Abela,* 124 S. Ct. 2388 (2004) ..... *passim*

Caruso v. Abela, 124 S.Ct. 2388 (2004) ..... *passim*

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Coates v. Byrd, 211 F.3d 1225 (11th Cir. 2000) ..... *passim*

County of Sacramento v. Lewis, 523 U. S. 833 (1998) 3, 4

Wilson v. Layne, 526 U. S. 603, 609 (1999) 3, 4

STATUTES AND RULES:

28 U.S.C. §2244(d)(1) ..... *passim*

28 U.S.C. §2244(d)(2) ..... *passim*

28 U.S.C. §2254 ..... *passim*

OPINIONS BELOW

The May 2, 2005 decision of this Court to deny certiorari (see attached Appendix A) concerning the opinion of the United States Court of Appeals for the Eleventh Circuit in *Roy Pitts v. James Crosby,* Case No. 04-13185-EE, issued on November 23, 2004, controlled by conflicting circuit opinions of *Coates v. Byrd,* 211 F.3d 1225 (11th Cir. 2000) and *Abela v. Martin,* 348 F.3d 164, 172-73 (6th Cir. 2003) (*en banc*), *cert. denied sub nom. Caruso v. Abela,* 124 S. Ct. 2388 (2004).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL:

The Fourteenth Amendment to the United States Constitution (in pertinent part) – "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens...nor deprive any person of life, liberty, or property, without due process of law; nor deny...equal protection of the laws."

FEDERAL:

28 U.S.C. §2244(d)(1)
28 U.S.C. §2244(d)(2)
28 U.S.C. §2254

STATEMENT OF THE CASE

Petitioner was denied review of his federal habeas petition, it being deemed untimely according to the holding in *Coates v. Byrd,* 211 F.3d 1225 (11th Cir. 2000), where the Eleventh Circuit interpreted the meaning of the word "pending" as used in the tolling provision of 28 U.S.C. §2244(d)(2). In denying Petitioner, the court conceded his petition may be timely under *Abela v. Martin,* 348 F.3d 164, 172-73 (6th Cir. 2003) (*en banc*), *cert. denied sub nom. Caruso v. Abela,* 124 S. Ct. 2388 (2004), where the Sixth Circuit interpreted the meaning of the word "pending" as used in the tolling provision of 28 U.S.C. §2244(d)(2), differently. Petitioner argued that it was a violation of the constitutional right of equal treatment under the law for state prisoners in Florida, Georgia and Alabama to have one amount of time to exhaust their state remedies and state prisoners in Michigan, Ohio, Kentucky and Tennessee to have more time, and he asked to have the conflict between the circuits resolved so that all state prisoners are treated the same. This court denied certiorari on May 2, 2005, and Petitioner seeks a rehearing so that the circuit conflict will not go unresolved.

REASONS FOR GRANTING THE WRIT

This Court's intervention is required because the circuit conflict is intractable. The Sixth has acknowledged conflict with the holding of the Eleventh in *Coates* (see *Abela)* and the United States District Court for the Northern District of Florida, has acknowledged the holding of the Eleventh in *Coates* conflicts with the Sixth's decision in *Abela* (see note 5 in Appendix D of Petitioner's Petition – Report and Recommendation of Magistrate Judge of the United States District Court for the Northern District of Florida, Tallahassee Division, in *Roy Pitts v. James Crosby, Jr.*). The Eleventh, in denying Petitioner, declined to revisit its decision in *Coates*, resulting in the conflict continuing to exist. This Court should rehear this cause and grant certiorari to resolve the conflict between the United States Court of Appeals for the

Eleventh Circuit in *Coates v. Byrd,* 211 F.3d 1225 (11th Cir. 2000), and the United States Court of Appeals for the Sixth Circuit in *Abela v. Martin,* 348 F.3d 164, 172-73 (6th Cir. 2003) (*en banc*), *cert. denied sub nom. Caruso v. Abela,* 124 S. Ct. 2388 (2004), as to how to interpret the tolling provision of 28 U.S.C. §2244(d)(2), so that all state prisoners will be treated equally concerning the amount of time they have to file a habeas corpus pursuant to §2254. Not only is the denial of review unfair to the Petitioner but it undermines the purpose served by initial consideration of the constitutional question, which is to clarify constitutional rights without undue delay. *See, e.g., Wilson v. Layne,* 526 U. S. 603, 609 (1999); *County of Sacramento v. Lewis,* 523 U. S. 833, 841-842, n. 5 (1998).

ARGUMENT

This case is a very strong candidate for certiorari because it involves circuit conflict as to the meaning of the word "pending" as used in 28 U.S.C. §2244(d)(2) to define for state prisoners their deadline for filing a habeas corpus pursuant to 28 U.S.C. §2254. This Court granted certiorari in an identical situation in *Clay v. United States,* 537 U.S. 522, 123 S.Ct. 1072, 155 L. Ed. 2d 88 (2003) to clarify the meaning of the word "final" likewise necessary for state prisoners to be able to calculate their deadline for filing a habeas corpus pursuant to 28 U.S.C. §2254, and likewise in conflict between the circuits.

On May 2, 2005 this Court denied certiorari review in this cause, leaving unresolved which circuit court definition of the word "pending" as used in 28 U.S.C. §2244(d)(2), is correct. Petitioner files this petition for rehearing to bring to the Court's attention that to allow this decision to stand leaves unresolved the conflict between the Eleventh Circuit in *Coates v. Byrd,* 211 F.3d 1225 (11th Cir. 2000), and the Sixth Circuit in *Abela v. Martin,* 348 F.3d 164, 172-73 (6th Cir. 2003) (*en banc*), *cert. denied sub nom. Caruso v. Abela,* 124 S. Ct. 2388 (2004), as to how to interpret the tolling provision of 28 U.S.C. §2244(d)(2). Leaving

this conflict unresolved results some citizens having 15 months to file their habeas corpus (the one year defined in 28 U.S.C. §2244(d)(1), plus the extra 3 months defined in *Clay*,) while others have an extra 3 months for each post conviction motion filed in state court. Since the "one-year" time limitation for filing a federal habeas corpus, actually is the time a state prisoner has to do obtain documents from the courts, do his or her research, and prepare motions for filing in state court, an additional 90 days is extremely significant, especially in light of the fact that most state prisoners are untrained in law and must proceed *pro se*, unable to afford to hire those trained in law to assist them, and must do all this when they first enter the system, having no idea of how to proceed. An extra 90, 180, 270, 360 days or even more has a very significant impact on a state prisoner's ability to exercise his right of habeas corpus.

For these reasons, this is too important an issue to leave unresolved and this Court should grant a rehearing and grant certiorari. Not only is the denial of review unfair to Petitioner but it undermines the purpose served by initial consideration of the constitutional question, which is to clarify constitutional rights without undue delay. *See, e.g., Wilson v. Layne,* 526 U. S. 603, 609 (1999); *County of Sacramento v. Lewis,* 523 U. S. 833, 841-842, n. 5 (1998).

CONCLUSION

Petitioner raised in his petition four questions to bring to this Court's attention a circuit conflict as to the correct way to interpret the AEDPA tolling provision contained in 28 U.S.C. §2244(d)(2), a conflict that results in some state prisoners in some states having more time that those in other states as to the exercise of their constitutional right to habeas corpus. This Court's May 2, 2005 decision to deny certiorari leaves unresolved a conflict of great public importance, and this Court should grant rehearing and resolve this conflict in order to preserve state prisoners' constitutional right to equal protection under the law.

Respectfully submitted,

/s/ David W. Collins
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William K. Suter
Clerk of the Court
(202) 479-3011

May 2, 2005

Mr. David Walter Collins
310 North Jefferson Street
Monticello, FL 32344-2057

Re: Roy Pitts
v. James V. Crosby, Jr., Secretary, Florida
Department of Corrections, et. al.
No. 04-1151

Dear Mr. Collins,

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
/s/ William K. Suter
William K. Suter, Clerk